Undercover Cigarette Internal Investigation Findings

The internal investigation revealed:

- 1. In January 2010, HPD assigned a liaison officer to an ATF regional task force, a common practice in local, state and federal cooperative law enforcement. In June 2010, HPD began its undercover operation involving the sale of illegal cigarettes in partnership with and under the direction of the ATF, pursuant to the terms of a June 2010 Memorandum of Understanding (MOU) with ATF. The internal investigator was unable to locate a fully executed copy of that MOU.
- 2. ATF solicited HPD's involvement in a Hampton-based operation.
- 3. The money that started the Hampton-based operation came from the proceeds of a churning based sale of cigarettes from another ATF-locality site in Virginia. It was neither ATF nor City of Hampton appropriated funds, but rather a transfer of churned assets from this other site, i.e. from one ATF-involved operation to another.
- 4. During the period of joint ATF-Hampton operations, charges were taken against 7 Hampton businesses on June 9, 2010, an individual subject on Sept. 2, 2010, and another individual on Sept. 28, 2010.
- 5. HPD discovered the illegal actions of the assigned ATF agent in October 2010. HPD reported this to the ATF. The agent Posey was not immediately removed from the operation by ATF due to further investigation of his criminal activity.
- 6. The exact date of the ATF "pull out" from the Hampton-based operation remains unclear, as there is no finding of any written or other formal communication of the ATF decision to terminate its direction or support of the operation. HPD began taking steps to determine ATF's intentions regarding its future role in the operation during a December 16, 2010, meeting in Hampton.
- 7. Two subsequent meetings were held with the ATF and U.S. Attorney's Office on Jan. 26, 2011, and Feb. 3, 2011, to determine future involvement by ATF. It was alleged, but could not be confirmed with documentation, that it was shortly after the February meeting that ATF indicated that it had no more staff or support to provide to the Hampton-based operation. The U.S. Attorney gave HPD 30 days to bring cases that met criteria for federal prosecution. HPD did not provide such cases within that deadline.
- 8. HPD did secure a Memorandum of Understanding (MOU) with the Commonwealth's Attorney's Office in which that office agreed to prosecute cases brought by HPD under a continued operation. The MOU was signed in February 2011 by former Chief Jordan and March 2011 by former Commonwealth's Attorney Linda Curtis.
- 9. The MOU states under the heading Revenue Accumulated (Churning of funds): "authorization is granted to utilize revenue(s) derived through investigatory actions throughout the course of the investigation(s). Those revenues shall be used to offset all investigative expenditures as related to

- this investigation and covert operations."
- 10. The MOU between HPD and the Commonwealth's Attorney's Office required monthly and quarterly audits by administrative/operational supervisors as well as a yearly audit. Monthly reviews were conducted by a HPD employee. However, this employee was not an accountant, bookkeeper or otherwise trained in tracking financial transactions.
- 11. HPD hired an accounting firm but not until November, 2011.
- 12. The employee assigned to perform financial tracking for the operation sent an email to command leadership that "an inspection of the accounts had been done" by the accounting firm. This email was not found in the investigation but others confirmed receipt of it and this message may explain the basis for stated beliefs by those in HPD that an audit was done. However, a traditional financial audit was not done.
- 13. After a newly assigned employee to the unit went to Jordan upon returning from his first training trip with the unit with concerns about use of expense monies ("per diem"), Jordan called in the State Police to investigate whether illegal actions occurred.
- 14. The State Police established at the conclusion of their investigation in June 2012 that HPD policy did not address travel regulations and per diems. According to the State Police, the amount of the travel funds under review was approximately \$8,000.
- 15. The State Police's findings were presented to then Acting Commonwealth's Attorney John Haugh and no criminal charges were taken.
- 16. The internal investigation was then begun in June 2012 to determine (a) whether officers had improperly retained funds that were issued to them for training-related travel expenses but were, in fact, charged to the Blue Water Tobacco account; and, (b) whether this was done with command personnel permission or knowledge.
- 17. There was undocumented use of investigative funds from the churning account on both training and target trips.
- 18. The HPD policy for this operation was copied nearly verbatim from a similar churning operation in another Virginia locality. That policy did not address the need for supporting documentation of all expenditures.
- 19. HPD policy for undercover operations mandates that all expenditures be documented (whether by receipts, where feasible, or by detailed narrative). There was no acceptable reason provided for deviating from this standard practice in the undercover cigarette operation.
- 20. Employees assigned to the operation uniformly reported that the use of investigative/expense funds without documentation was condoned. However, the command staff denied that officers could retain unspent funds.
- 21. The employees said they believed that this practice was considered acceptable in this operation because of the unique nature of the assignment. City policy, the HPD Code of Ethics and prior HPD practice, however, dictate otherwise.
- 22. All travel was for legitimate law-enforcement purposes, such as training, information-gathering from other Virginia-based churning sites and

- intelligence gathering on suspected targets. However, there are questionable expenses such as costly meals on training trips. Note, however, that the more expensive meals might have been reasonable and necessary for target trips.
- 23. There were lax practices in terms of accountability for an operation involving so much money. The majority of money that flowed in and out of the account was for the purchase/sale of cigarettes. Nevertheless, there was insufficient HPD oversight of necessary operational and administrative details. Unspent cash per diem funds were not collected. The typical records required to be kept in undercover operations by HPD policy were not kept in this operation.
- 24. The churning account was not frozen when the operation was halted. Expenses continued to be charged against the account, and all were related to the churning operation. Most were for utilities associated with the leased facility. These have been cancelled. Additionally, there are a few continuing expenditures for contracted services (specifically the wireless data packages and security monitoring services). The City is making every effort to terminate these; however, this is hampered to some degree by the vendors' termination policies.